

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

168th and DODGE, L.P. (f/k/a BROWN)
INVESTMENT PARTNERSHIP, LTD.) and)
RED DEVELOPMENT OF WEST DODGE, LLC,)
)
Plaintiffs,)
) Civil Action No. 05-MC-10293-RGS
vs.)
)
RAVE REVIEWS CINEMAS, LLC,)
)
Defendant.)
)

**AFFIDAVIT OF KATHLEEN B. SHIELDS IN SUPPORT OF
THIRD PARTY BOSTON VENTURES MANAGEMENT INC.'S
OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL**

I, Kathleen Burdette Shields, state under penalties of perjury that the following facts are true:

1. I am a partner with the law firm of Choate, Hall & Stewart LLP, and am counsel of record for Third Party Boston Ventures Management Inc. ("Boston Ventures") in the above-captioned case. I submit this Affidavit in support of Boston Ventures' Opposition to Plaintiffs' Motion to Compel.

2. Exhibit A to this Affidavit contains true and correct copies of selected excerpts from the deposition transcript of Boston Ventures' corporate designee, Elizabeth Granville-Smith, which was taken on June 30, 2005.

3. On behalf of Boston Ventures, I sent a letter to Red's counsel on June 10, 2005 objecting to the second subpoena served on Boston Ventures by Red. After my June 10 letter,

counsel for Red did not contact me until the evening of June 28, two days before the scheduled June 30 deposition of Boston Ventures' corporate representative. During our telephone conversation on June 28, we discussed Boston Ventures' objections to Red's second subpoena. Red's counsel stated that he was most interested in documents concerning the Board approval process for new theaters that Rave wanted to build, and documents describing any procedure that Boston Ventures may follow when deciding to approve or disapprove an individual theater that Rave wanted to build. I informed Red's counsel that Boston Ventures continued to object to the current scope of Topic 5 of Red's subpoena, but that if Red agreed to narrow the scope of Topic 5 to the documents he just described, I would consult with my client and may agree to a compromise in which Boston Ventures would search for such documents. Red's counsel responded that he needed to consult with his client and would let me know if he would so limit Topic 5.

4. During our telephone call on the evening of June 28, Red's counsel also suggested that he may want to postpone the scheduled June 30 deposition so that the parties' dispute over Topic 5 could be resolved before the expense of the deposition was incurred. I agreed with that approach and agreed to consult with my client to find other convenient dates for the deposition.

5. On June 29, I left two telephone messages for Red's counsel so that we could continue our discussion about whether he would agree to compromise concerning the scope of Topic 5 and whether he wanted to reschedule the June 30 deposition. My telephone calls were not returned.

6. At about 4 p.m. on June 29, I received a faxed letter from Red's counsel. The letter indicated that Red's counsel intended to proceed with the June 30 deposition. The letter

did not address our discussion concerning a compromise on Topic 5. Red's counsel ultimately refused to limit the scope of Topic 5.

Signed under the pains and penalties of perjury this 26th day of August, 2005.

/s/ Kathleen Burdette Shields

Kathleen Burdette Shields

EXHIBIT A

1 VOLUME: I
2 PAGES: 205
3 EXHIBITS: 1 - 6

4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF NEBRASKA

7
8 168th and DODGE, L.P., a Nebraska)
9 Limited Partnership f/k/a BROWN)
10 INVESTMENT PARTNERSHIP, LTD., and)
11 RED DEVELOPMENT OF WEST DODGE, LLC)
12 a Missouri Limited Liability Company,)
13)
14 Plaintiffs,)
15)
16 vs.)
17)
18 RAVE REVIEWS CINEMAS, LLC, a Texas)
19 Limited Liability Corporation,)
20)
21 Defendant.)
22
23

24 VIDEO DEPOSITION OF ELIZABETH
1 GRANVILLE-SMITH, a witness called on behalf of the
2 Plaintiffs before Dawn Mack-Boaden, Court Reporter
3 and Notary Public in and for the Commonwealth of
4 Massachusetts, held at the Law Offices of Choate,
5 Hall & Stewart, 53 State Street, Boston,
6 Massachusetts, on Thursday, June 30, 2005,
7 commencing at 9:15 a.m.

8
9
10 EYAL COURT REPORTING, INC.
11 4 FANEUIL HALL MARKETPLACE
12 BOSTON, MASSACHUSETTS 02109
13 (617) 723-9432 (800) 322-3925

1 A. Yes.

2 Q. First of all, it asks you to produce all
3 correspondence, whether in electronic format or
4 otherwise, between Rave Reviews Cinemas, L.L.C.,
5 including its agents and employees, and Boston
6 Ventures Management, Inc., including its parents,
7 subsidiaries, agents and employees, regarding the
8 Village Pointe Shopping Center project in Omaha,
9 Nebraska. Did I read that correctly?

10 A. Yes.

11 Q. Now, did you actually engage in this
12 search?

13 A. Yes, I did.

14 Q. What steps did you take to -- to look for
15 responsive documents?

16 A. I reviewed all of my own personal Rave
17 files, as well as all my electronic files. I then
18 reviewed all of the central files that we keep
19 within the firm, where we keep all of our deal
20 memoranda, et. cetera.

21 I then requested that every member of my
22 team do the same and asked for them to respond back
23 to me with the affirmative that either they had
24 found documents or they had not. They were also

1 each given a copy of this subpoena.

2 Q. Okay. Now, Ms. Granville-Smith, is it
3 your testimony that there is no e-mails between
4 Boston Ventures and Rave Reviews Cinemas regarding a
5 potential theater engagement in Omaha, Nebraska?

6 A. Based upon my review of our files, I did
7 not find any e-mail correspondence.

8 Q. So -- okay. Again, I'm following up so I
9 can understand you.

10 So it's your testimony for the judge and
11 the ladies and gentlemen of the jury that Boston
12 Ventures doesn't have a single e-mail communication
13 between any employee, agent of Boston Ventures and
14 any representative of the Rave Reviews Cinemas
15 regarding a theater project in Omaha, Nebraska?

16

17 MS. SHIELDS: Objection.

18 MS. MCCREARY: Objection; asked and
19 answered. It's argumentative.

20 MS. SHIELDS: Same objection.

21 THE WITNESS: Shall I answer?

22 MS. SHIELDS: If you can.

23 THE WITNESS: Based upon my review of
24 our files, which I believe was thorough, I

1 found no e-mail correspondence.

2

3 BY MR. COYLE:

4 Q. Now, were you actually -- did you have any
5 involvement in this particular engagement?

6

7 MS. SHIELDS: Objection as vague.

8

9 BY MR. COYLE:

10 Q. Did you have any involvement in -- in
11 Boston Ventures looking at a potential investment in
12 a Rave -- Rave Reviews Cinema project in Omaha,
13 Nebraska? Did you have any involvement in that?

14 A. I had no direct involvement.

15 Q. What does that mean? I mean, did people
16 on your team have involvement in that?

17 A. No direct involvement.

18 Q. I guess I -- I don't know what that means.

19

20 MS. MCCREARY: I'm going to object.

21 I'm going to ask the court reporter if you
22 can read back his foundational question,
23 please.

24 COURT REPORTER: The last question?

1 MS. MCCREARY: His foundational
2 question.

3 MS. SHIELDS: The not what does that
4 mean. The one where there's actually a
5 substantive question.

6

7 (The question was read back as
8 follows:

9 "I mean, did people on your team
10 have involvement in that?")

11

12 MS. MCCREARY: The one before that.

13

14 (The question was read back as
15 follows:

16 "Did you have any involvement in
17 Boston Ventures looking at a
18 potential investment in a Rave
19 Reviews Cinema project in Nebraska?")

20

21 MS. MCCREARY: Thank you.

22 MR. COYLE: Can you read my last
23 question back, please?

24

1 (The question was read back as
2 follows:

6 BY MR. COYLE:

7 Q. Now, you've answered -- let me follow up.
8
9 You're telling me no direct involvement.
10 I take it that direct involvement means that you
11 never personally sent an e-mail?

12 MS. SHIELDS: Objection; vague. If
13 you can answer the question as posed,
14 please do.

16 BY MR. COYLE:

17 Q. I mean, really, this is not meant to be
18 that hard.

19 I'm just trying to find out if there's --
20 is it your testimony, Ms. Granville-Smith, that you
21 never sent an e-mail to anybody at Rave regarding
22 Boston Ventures potentially participating in the
23 development of a theater complex in Omaha, Nebraska?

A. I don't know whether or not I sent an

1 e-mail to them about that or not.

2 Q. Okay. Did -- did you ever have any
3 discussions with anybody at Rave about a potential
4 investment in a theater project in Omaha, Nebraska?

5 A. I had knowledge that they were looking at
6 Omaha. I had no direct involvement in the process.

7 Q. Okay. Now, let's go back to when you say
8 direct involvement -- and we'll talk about that in a
9 second, but my question is really a lot more narrow.

10 What I'm trying to find out is, is there
11 ever any e-mail communications with
12 representatives of Boston Ventures and
13 representatives of Rave involving this project in
14 Omaha, Nebraska?

15

16 MS. SHIELDS: Objection; asked and
17 answered.

18 MS. MCCREARY: And foundation.

19 THE WITNESS: I don't know if there
20 are any e-mails.

21

22 BY MR. COYLE:

23 Q. Okay. And let me tell you why I'm asking
24 you the question is, is that we sent out this

1 notice, Exhibit Number 1, and we asked Boston
2 Ventures to produce somebody who could testify about
3 these matters, and we asked you to bring with you
4 all e-mails between Boston Ventures and Rave
5 regarding this potential engagement in Omaha,
6 Nebraska, and none have been produced. Can we agree
7 on that?

8 A. None have been produced.

9 Q. Okay. Now, I understand that you sent out
10 a copy of the subpoena to all of your colleagues and
11 asked them, you know, to look; and, apparently,
12 nobody gave you any e-mails. Is that what you're
13 telling us?

14

15 MS. SHIELDS: Objection. It misstates
16 the witness's prior testimony.

17 THE WITNESS: I sent out the subpoena.
18 I asked people to review their e-mail
19 correspondence, all their electronic files,
20 as well as our print files. And what I
21 received back is what I produced.

22

23 BY MR. COYLE:

24 Q. Do you -- do people at Boston Ventures

1 routinely use e-mail?

2 A. Yes.

3 Q. And, certainly, Rave Reviews Cinema is
4 somebody that members of your team, so to speak,
5 work with on a daily basis; is that a fair
6 statement?

7

8 MS. SHIELDS: Objection.

9 THE WITNESS: Not on a daily basis.

10

11 BY MR. COYLE:

12 Q. How about on a routine basis?

13

14 MS. SHIELDS: Objection.

15 MS. MCCREARY: Objection.

16 THE WITNESS: On a routine basis, we
17 discuss things with the management team of
18 Rave.

19

20 BY MR. COYLE:

21 Q. Okay. I mean, I'm just trying to figure
22 out what your testimony is on this.

23 Are you telling us that there are no
24 e-mails?

1 BY MR. COYLE:

2 Q. Okay. Let me follow up on that. What do
3 you mean by company matter?

4 A. That's a vague question. You'll have to
5 be more specific.

6 Q. I'm just following up on your -- you said
7 to me -- I asked you if it was unusual; you said no
8 because this was a company matter; it had not
9 reached the level of the board of managers.

10 And I'm just trying to figure out what you
11 meant by company matter. What does that mean?

12 A. The potential site in Omaha had not yet
13 reached a level of development in which it was
14 discussed in detail at the board of managers level.

15 Q. Did the board of managers at Boston
16 Ventures discuss specific Rave projects for theater
17 sites?

18

19 MS. SHIELDS: Objection.

20 MS. MCCREARY: Objection.

21 THE WITNESS: Your question is
22 incorrect. You have to restate the
23 question.

24 MR. COYLE: Okay.

1 A. We have had business conversations with
2 members of the Rave management team prior to that.

3 Q. Okay. But your first equity commitment
4 was in 1999?

5 A. In or around 1999.

6 Q. Okay. Was there a certain amount of money
7 that was committed in 1999?

8 A. In or around 1999, we committed a first
9 installment, yes.

10 Q. And how much was that?

11 A. Fifty million dollars.

12 Q. Okay. Now, in regard to that \$50 million
13 commitment, was there a protocol that was generally
14 followed by Boston Ventures and Rave about
15 individual sites?

16

17 MS. SHIELDS: Objection; vague and
18 ambiguous.

19

20 **BY MR. COYLE:**

21 Q. Do you understand my question?

22 A. Could you restate it, please.

23 Q. Well, I take it that you're not going to
24 build a theater in every, you know, city in America

1 BY MR. COYLE:

2 Q. Just give me a general procedure.

3
4 MS. MCCREARY: Objection; asked and
5 answered. It's badgering.

6 MS. SHIELDS: Same objection.

7 THE WITNESS: Shall I answer?

8 MS. SHIELDS: If you can answer the
9 question.

10 THE WITNESS: In very general terms,
11 the management team at Rave reviews many
12 sites. At any time, we could have five to
13 ten sites in different levels of analysis
14 and diligence.

15 At some point during the analysis of a
16 site, the Rave management team makes a
17 determination that they want to go forward
18 with the site; and they will bring an
19 approval book to the board of managers.

20
21 BY MR. COYLE:

22 Q. And that board of managers would be the
23 board of managers at Boston Ventures?

1 conference calls, we approve and review
2 board approval books.

3
4 BY MR. COYLE:

5 Q. Okay. And once the board approval book is
6 approved, then the process can move forward to the
7 execution of a lease?

8 A. It's a little more complicated than that.

9 Q. But, generally, that would be the process?

10

11 MS. SHIELDS: Objection.

12 THE WITNESS: The process is we review
13 board books. It takes a series of
14 conference calls, questioning, and analysis
15 by the Board.

16 In some cases, there are subsequent
17 diligence trips out to look at the site.

18 In some cases, we modify.

19 And then it moves in to lease
20 negotiations, which then takes a
21 considerable amount of time.

22
23 BY MR. COYLE:

24 Q. Okay. But you'll never get to the lease

1 general -- the process here; and I understand that
2 there might be a difference here and a difference
3 there.

4 But, generally, this due diligence on
5 these different sites is done by Rave; and then,
6 eventually, it reaches a process where they think if
7 it's a site that's suitable for Boston Ventures to
8 consider, they put together this approval book, and
9 then you look at that particular site. Is that,
10 generally, a fair statement?

11
12 MS. MCCREARY: Object to the form. It
13 assumes facts not in evidence; calls for
14 speculation; vague.

15 THE WITNESS: I would like to restate,
16 in my words, how it works.

17
18 BY MR. COYLE:

19 Q. Okay. Go ahead.

20 A. Not agreeing to your words, necessarily.
21 As I sit here today, the approval process works as
22 such:

23 The management team of Rave reviews many
24 sites. When they find a site that they believe

1 merits being in the Rave portfolio and they have
2 completed the majority of their analysis and
3 diligence on the opportunity, they bring it to the
4 attention of the board of managers.

5 Q. All right. How many people are on the
6 board of managers?

7 A. As I sit here today, I believe it's five.

8 Q. And three of those board of managers would
9 be from Boston Ventures?

10 A. Yes.

11 Q. Okay. Was a approval book presented by
12 the Rave management team to the board of managers
13 for the site in Omaha, Nebraska?

14 A. No, it was not.

15 Q. Now, are -- can there be sites on the
16 theater pipeline -- and looking at this list of 7
17 through 18 -- where the Rave management team could,
18 on their own, decide that it's not something they
19 want to present to the board of managers of Boston
20 Ventures?

21
22 MS. MCCREARY: Object to the form.

23 Calls for speculation and lacks foundation.

24 MS. SHIELDS: Object; vague.

1 THE WITNESS: I think it's complicated
2 the way you phrased it. I'll answer it in
3 my own words.

4 The management team decides to pursue
5 or not pursue sites based upon their own
6 analysis. Only when they decide they want
7 to pursue a site and bring it to the board
8 of managers are we notified.

9
10 BY MR. COYLE:

11 Q. And -- and it's your testimony that the
12 Rave Reviews Cinemas never brought the Omaha,
13 Nebraska theater complex to the board of managers
14 for Boston Ventures for their approval?

15 A. As I said earlier today, I knew about
16 Omaha; that they were looking at it. It was never
17 brought for approval to the board of managers.

18 Q. Was it -- so is it your testimony that
19 Boston Ventures -- well, let me back up.

20 Has a -- has a theater project site been
21 brought to the board of managers of Boston Ventures
22 where they've -- they've made a decision not to
23 invest?

1 MS. SHIELDS: Objection; calls for
2 speculation. It's beyond the scope of the
3 subpoena. I'll permit Ms. Granville-Smith
4 to answer the question.

5 THE WITNESS: Okay. One point: You
6 keep saying -- your terminology is
7 incorrect, and I want to make sure it's
8 clear for the record.

9 MR. COYLE: Okay.

10 THE WITNESS: Board of managers of
11 Rave.

12
13 BY MR. COYLE:

14 Q. I understand.

15 A. Okay. But please be clear.

16 Q. Thank you. So has there ever been a -- a
17 site that's been brought to the board of managers
18 that they decided not to pursue?

19 A. As I said earlier today, we spend a lot of
20 time on the approval books and make modifications
21 about sites.

22 I can not recall, as I sit here today, a
23 specific site that was vetoed. But, certainly, many
24 sites have been modified or put on the back burner

1 for periods of time as we prioritized the needs of
2 the company.

3 Q. Okay. Were you ever presented with an
4 approval book on the Omaha theater?

5 A. No, I was not.

6 Q. Is it your testimony that no such approval
7 book was ever submitted to the board of managers?

8 A. To the best of my knowledge, I do not
9 believe any approval book was ever submitted to the
10 board of managers.

11 Q. Do you -- do you know why no approval book
12 was ever submitted to the board of managers
13 regarding the proposed Rave site in Omaha, Nebraska?

14

15 MS. SHIELDS: Objection; calls for
16 speculation.

17 THE WITNESS: I would have to
18 speculate. It wouldn't be within my
19 knowledge base.

20

21 BY MR. COYLE:

22 Q. Well, I mean, it's on your list. I take
23 it you work with these people every day.

24 Did you ever say to Tom, Hey, what

1 A. Yes, I am.

2 Q. I want to go back to this approval book --
3 this approval process. Okay.

4 Now, is there information that you -- that
5 is -- you typically see in an approval book?

6

7 MS. SHIELDS: Objection.

8 THE WITNESS: Yes, there is typical
9 information in an approval book.

10 Some sites may require specific
11 additional information.

12

13 BY MR. COYLE:

14 Q. What kind of -- what kind of information
15 would you typically see in an approval book?

16 A. As I said earlier today, among other
17 things, there would be a description of the
18 opportunity; description of the market, including

19 demographics, size; a description of the competitive
20 situation; and, typically, a description of the
21 potential lease terms.

22 The approval book might include maps,
23 among other things.

24 Q. What do you call the -- is there some kind

1 of proforma financial? What do you call that?
2 I mean, I take it that there's some
3 numbers -- analysis of projections of revenue and
4 things of that nature. What do you call those? Is
5 that an FY?

6

7 MS. SHIELDS: Objection; calls for
8 speculation.

9

10 BY MR. COYLE:

11 Q. What is the term? Is there a term you use
12 for that or --

13

14 MS. SHIELDS: Assumes facts not in
15 evidence.

16 THE WITNESS: I really don't
17 understand what you're asking me.

18

19 BY MR. COYLE:

20 Q. Is there -- is there some type of -- of
21 projections of revenue?

22

23 MS. MCCREARY: Objection as vague;
24 assumes facts not in evidence.

1 THE WITNESS: In our approval books,
2 there would typically be an assessment of
3 the level of attendance expected to be
4 generated by the potential cinema, which
5 would then translate into a revenue
6 expectation.

7

8 BY MR. COYLE:

9 Q. Okay. Now, let's go back to some of the
10 other things you described for me.

11 A lease: Would you see a lease in your --
12 in your approval book?

13 A. The approval books typically have, but not
14 all of them, but they would typically include the
15 economic terms that the management team believed
16 they could get from the developer.

17 Q. Okay. And would you -- and those are --
18 the economic terms you'd get from the developer,
19 would you, on occasion, see, then, an actual lease?

20
21 MS. SHIELDS: Objection.

22 THE WITNESS: As I sit here today, I
23 don't recall a situation where I saw a
24 lease at the time of the approval. It

1 typically occurs much later.

2

3 BY MR. COYLE:

4 Q. Okay. And what do you mean it typically
5 occurs much later -- the lease? Could you describe
6 that for me, please; explain.

7 A. What typically occurs is the management
8 team determines what they believe the economics to
9 be of the lease and the terms of that lease; but we
10 wait until we have approval by the Board before
11 launching into very detailed lease negotiations.

12 That's the way it typically works. But,
13 again, each deal is different.

14 Q. Well, when you say each -- I understand
15 every -- every site has some unique factors
16 associated with it; is that what you're saying?

17

18 MS. MCCREARY: Objection.

19 MS. SHIELDS: Objection.

20 MS. MCCREARY: Misstates her
21 testimony.

22 MS. SHIELDS: Same objection.

23 THE WITNESS: What I'm saying is that
24 each site has unique elements to it;

1 potentially unique timetables.

2 And what I said earlier is that
3 typically the lease negotiations occur
4 after we have an approved deal that has
5 gone through the board of managers approval
6 process.

7

8 BY MR. COYLE:

9 Q. Okay. Now, when you talk about economic
10 terms from the developer -- and, again, I understand
11 that each particular site might have some --
12 something unique about it -- will -- will the board
13 of Rave ever look at the proposed terms from a
14 developer and say, Hey, we need -- you know, we
15 don't like these terms, see if you can go back and
16 get this, this, and this.

17 Would that be unusual for you to have
18 something like that?

19

20 MS. SHIELDS: Objection; calls for
21 speculation, and compound.

22 MS. MCCREARY: Objection as to
23 definition of board. It's vague.

24 THE WITNESS: As I said earlier today,

1 I can recall various times going back and
2 asking the management team to modify terms
3 about sites.

4 And then when they get more in to the
5 lease negotiations, I review those leases
6 and have pushed back on various times on
7 economic terms.

8

9 BY MR. COYLE:

10 Q. Okay. And when you say push back, that --
11 that's a term where you'll want to negotiate further
12 -- the terms?

13 A. Yes; or just say no.

14 Q. Okay. So will -- there will be sites
15 where you'll actually review the lease?

16 A. As I sit here today, I can tell you that I
17 have reviewed the majority, if not all, of the
18 leases that Rave has signed.

19 Q. Okay. Now, are all of the Rave theater
20 sites -- these are ~~these are stadium-type seating~~
21 theaters; is that correct?

22

23 MS. SHIELDS: Objection.

24 THE WITNESS: Yes; all of the cinemas

1 have stadium seating in them.

2

3 BY MR. COYLE:

4 Q. Okay. And these are all brand new
5 theaters?

6

7 MS. SHIELDS: Objection.

8 THE WITNESS: We built all the -- all
9 the cinemas for ourselves, yes.

10

11 BY MR. COYLE:

12 Q. I mean, you're not -- you're not buying,
13 you know, Ajax Cinema on Fourth Street and
14 remodeling it.

15 These are -- these are sites that Rave is
16 building from the ground up.

17 A. At this stage, our strategy has not been
18 one of acquisition, but rather of new build.

19 Q. Okay. Now, I take it that -- are some of
20 your sites, then, in new developments?

21

22 MS. MCCREARY: I'm going to object to
23 the characterization of your sites.

24 She's here on behalf of Boston

4 BY MR. COYLE:

5 Q. You can answer.

6 A. At Rave, the company builds in many
7 different locations. One of the locations happens
8 to be within leisure and retail development.

9 Q. Okay.

A. That's one scenario, yes.

11 Q. Okay. And have you had -- have you had
12 situations where Rave is going in as one of the --
13 the initial tenants of a new development?

14 A. That is certainly something we try to
15 avoid; but I can't recall specifically if, in any
16 situation, we were the first tenant.

17 Q. Well, I guess my point is, is that are
18 some of these potential sites driven -- have time
19 constraints on them?

20 In other words, there's going to be a
21 grand opening of a -- of a new retail development
22 of, you know, of maybe some stores and some shops
23 and -- that Rave would open with at the same time?

1 MS. MCCREARY: Objection; lacks
2 foundation, calls for speculation.

3 MS. SHIELDS: Objection; compound and
4 ambiguous.

5 THE WITNESS: I'm going to restate the
6 answer in my own words.

7 It's very difficult to put these
8 general terms against what is really a very
9 specific situation with each site.

10 If you review leases that the company
11 has, in certain of those leases there are
12 times associated upon which the developer
13 would like us to be open at; but,
14 certainly, not in every single case.

15

16 BY MR. COYLE:

17 Q. Okay. And I understand. And what I'm
18 saying is, is that some times in your approval
19 process, that could potentially be a factor; that,
20 you know, we need to make a decision on this within
21 this time period if we're going to be part of this,
22 you know, grand opening.

23

24 MS. MCCREARY: Object to the form;

1 leading, calls for speculation, and assumes
2 facts not in evidence.

3 MS. SHIELDS: Same objection.

4 THE WITNESS: I think you're putting
5 your own spin on this. It just doesn't
6 work that way.

7
8 BY MR. COYLE:

9 Q. Okay. So there's never a time -- as far
10 as these potential sites, none of them are time
11 sensitive?

12
13 MS. SHIELDS: Objection; misstates the
14 witness's prior testimony.

15 THE WITNESS: My statement to this
16 question is that there typically is
17 significant time -- lead time -- ahead of
18 an opening such that the board approval
19 process typically is not constrained by
20 time factors.

21 MR. COYLE: Let's -- can we take a
22 recess for just one minute.

23 Let's go off the record, please.

24

1 management at Rave?

2

3 MS. SHIELDS: Objection; asked and
4 answered several times.

5 THE WITNESS: I do believe I have
6 already answered this a couple of times.

7 But I had no knowledge -- I don't know
8 if they were in discussions on the lease
9 terms to the Omaha site.

10

11 BY MR. COYLE:

12 Q. Okay. Now, earlier in the deposition you
13 talked about a 1999 commitment of \$50 million and
14 then a second commitment in 2002. Do you remember
15 that?

16 A. What I said at that time is that it was in
17 and around 1999 and in and around 2002.

18 Q. Okay.

19 A. Those are the approximate dates.

20 Q. That's fine.

21 A. Okay.

22 Q. I understand.

23 A. Okay.

24 Q. And in 1999, it was 50 million?

1 A. Yes.

2 Q. And what was the commitment in 2002?

3 A. In and around that time, we committed an
4 additional \$10 million.

5 Q. And when you talk about this commitment,
6 that is not for any specific site, but for
7 investments in numerous sites.

8

9 MS. SHIELDS: Objection.

10 THE WITNESS: The commitment in the
11 equity is used to fund the operations of
12 the company, including capital expenditures
13 required to build new cinema sites.

14

15 BY MR. COYLE:

16 Q. Okay. I want you to pick up Exhibit
17 Number 4.

18 A. Okay.

19 Q. Are you familiar with the Boston Ventures
20 web site?

21 A. I've been on the Boston Ventures web site
22 from time to time. I'm not responsible for its
23 content or the updating of it.

24 Q. I understand. I will tell you that this

1 granted to W.P. Carey, have all of the voting
2 rights, including the ability to elect the Board of
3 Managers and certain preferences over B and C Units
4 as it relates to return of invested capital, among
5 others.

6 Did I read that correctly?

7 A. No, you didn't, actually. It's Boston
8 Ventures Limited Partnership 5. But all other words
9 were correct.

10 Q. Okay. And as far as the ability to elect
11 the Board of Managers of Rave Reviews Cinemas,
12 Boston Ventures still has that power?

13

14 MS. SHIELDS: Objection; calls for a
15 legal conclusion.

16 THE WITNESS: I would have to review
17 our current LLC agreement to give you a
18 very specific and certain answer to that.

19

20 ~~BY MR. COYLE:~~

21 Q. Okay. Is it your testimony,
22 Ms. Granville-Smith, that Boston Ventures does not
23 have that power?

24